

# **EXHIBIT A**

Hon. Robert S. Lasnik  
Hearing Date: November 15, 2013  
Hearing on Motion to Extend Time: *ex parte*

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AMANA MUTUAL FUNDS TRUST, an  
Indiana trust and registered investment  
company; et al

Plaintiffs

vs

HOLY LAND FOUNDATION FOR RELIEF  
AND DEVELOPMENT, a Texas non-profit  
organization, et al

Defendants

Case No. CV06-0518 RSL

**RUBIN DEFENDANTS' RESPONSE TO  
USA's MOTION TO DISBURSE AND  
DISMISS; and**

**MOTION TO EXTEND TIME FOR FILING  
RESPONSE AND HEARING**

**Hearing Noted: November 15, 2013**

The Rubin Defendants<sup>1</sup> in the above entitled matter respond to the United States' motion  
to disburse and dismiss [Dkt No. 45]; and

<sup>1</sup> The Rubin Defendants include Jenny Rubin, Deborah Rubin, Daniel Miller, Abraham Mendelson, Stuart Elliot Hersch, Renay E. Frym, Noam Rozenman, Elena Rozenman, and Tzvi Rozenman ("plaintiffs") have a judgment wholly or partially unsatisfied, against the above named defendant, HAMAS – Islamic Resistance Movement ("HAMAS"), entered on September 27, 2004, in the United States District Court for the District of Columbia and domesticated in the court from which the writ is being sought

RUBIN DEFENDANTS' RESPONSE AND MOTION  
TO EXTEND TIME

***STERNBERG THOMSON OKRENT & SCHER, PLLC***

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Move the Court for an order to extend the time for the noted hearing date, November 15, 2013 and the response date and show as follows:

1. The Rubin Defendants hold unsatisfied judgments totaling \$214,500,000.00 against Hamas, the Islamic Resistance Movement ("HAMAS"), which were entered in the United States District Court for the District of Columbia on September 27, 2004. Exhibit A. These judgment were registered in this court under Cause No. MS 04-191 on December 8, 2004. A writ of garnishment against funds and accounts of the Holy Land Foundation for Relief and Development ("HLF") was issued by this court in February of 2005.<sup>2</sup>

2. Saturna Capital, the Garnishee Defendant, answered that as of March 29, 2005, the day the Writ was served, it held over one million dollars value in shares, which it converted to cash, and interplead in these proceedings. Pursuant to the garnishment, on April 13, 2013, Saturna deposited \$1,431,666.95 into the Registry of this Court. See. Docket No. 1. A copy of Saturna's Answer to the Writ of Garnishment is attached as Exhibit B. See, also, Government's Statement of Facts, Docket No. 45 at paragraph 4.

3. On July 26, 2004, the Government filed a 42 count indictment against the HLF in the Northern District of Texas. The HLF was ultimately convicted and ordered to forfeit \$12,400,000 to the United States. After appeals relating to the disposition of the funds held by this Court in Texas and the Fifth Circuit, the Fifth Circuit Court of Appeals issued a final order

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<sup>2</sup> Under the provisions of §201(a) of The Terrorism Risk Insurance Act of 2002 (Public Law 107-297; 116 Stat. 2322) ("TRIA") because the Holy Land Foundation is an agency and instrumentality of HAMAS within the meaning of TRIA, the Plaintiffs were entitled to satisfy their judgment from assets of the Holy Land Foundation for Relief and Development.

1 declaring that the Government had the right to these funds. See, *United States v. HLF, et al*, 722  
2 F.3d 677 (5th Cir. 2013) a copy of which is file under Docket No. 45 in this case. See, also  
3 Government's Statement of Facts, Docket No. 45, at paragraphs 5 and 6.

4         4.         However, the Rubin Defendants respectfully believe that the Fifth Circuit's  
5 decision is erroneous and unenforceable in this Court because (among other reasons) under Ninth  
6 Circuit case law, the disposition of funds that are in the registry of the court - like the funds at  
7 issue here - are within the sole jurisdiction of the court holding such funds. See e.g., *U.S. v.*  
8 *Rubenstein*, 971 F.2d 288, 294 (9th Cir. 1992) ("Funds deposited in the registry of a federal  
9 district court are *in custodia legis*. As such, the district court's control over the funds is virtually  
10 supreme.").

11  
12         5.         Accordingly, the Fifth Circuit lacked jurisdiction to rule on the disposition of  
13 these assets. The fact that the Fifth Circuit rejected the Rubin Defendants' *in custodia legis*  
14 argument is of no moment, because it lacked jurisdiction to rule in the first place and because the  
15 funds are governed by Ninth Circuit law because they are in this district. Therefore, the Rubin  
16 Defendants can and are prepared to challenge the Fifth Circuit's decision in this Court, and if  
17 need be on appeal in the Ninth Circuit.

18         6.         Notwithstanding the above, the Rubin Defendants hoped and expected that it  
19 would be unnecessary for them to continue their proceedings in this Court: during the course of  
20 the proceedings in the Fifth Circuit the Government expressly and repeatedly represented to the  
21 Fifth Circuit that if it prevailed on its forfeiture claims, it would nonetheless distribute the HLF  
22

1 funds to the Rubins and to other victims of Hamas terrorism. *See* Brief for the United States,  
2 Exhibit A, at 3, 8, 17 and Addendum.

3         7. While the Government's plan to distribute the funds to United States victims of  
4 Hamas will leave the Rubins with far less than they would otherwise be entitled to, they were  
5 and are prepared to accept that outcome, and terminate their litigation in respect to the assets.  
6 Unfortunately, however, the Government appears to have reneged on its promise to distribute the  
7 assets to the Rubins and the other victims. The Rubins' lead counsel, attorney David J.  
8 Strachman, has reached out repeatedly to the Government attorneys involved over the past few  
9 months and requested information regarding the promised distribution, but has received only  
10 evasive, non-committal replies. Thus, it appears that the Government's promise to the Fifth  
11 Circuit that the funds would be distributed to the Rubins and other victims after forfeiture which  
12 we believe was a primary concern when the Fifth Circuit endorsed the forfeiture, may not be  
13 fulfilled without further court intervention.  
14

15         8. On Wednesday, November 6, 2013, Senior U.S. District Judge Robert W. Sweet  
16 of the U.S. District Court for the Southern District of New York held a status conference  
17 regarding the HLF funds held in that district. *Rubin v. Hamas*, 1:11-mc-00039-P1 (SDNY)  
18 (RWS). At that conference Government counsel argued that in light of the Fifth Circuit's  
19 decision, the funds should be conveyed the Government forthwith. The Rubin Defendants'  
20 counsel opposed that request, and provided Judge Sweet with the relevant background regarding  
21 the Government's undertaking to distribute the funds to the Rubins and other victims, and its  
22 subsequent failure (or refusal) to do so. Judge Sweet asked Government counsel for the details of  
23  
24

1 the putative distribution, but the latter stated that he was unable to provide them. Accordingly,  
 2 Judge Sweet set a status conference for December 10, 2013, at which time counsel for the  
 3 Government is to report to Judge Sweet on the details and status of the promised distribution.<sup>3</sup>

4 9. Given the Government's continuing pattern of evasion on this issue including as  
 5 recently the hearing before Judge Sweet on November 6, the Rubin Defendants respectfully  
 6 believe that this Court should follow the course taken by Judge Sweet in the parallel proceeding  
 7 and adjourn the Government's pending motion to release the funds, until the Government has  
 8 confirmed that it will be making the distribution and provided the details and timetable therefor.  
 9 If it emerges that the Government is indeed reneging on its promise to the Fifth Circuit, the  
 10 Rubin Defendants will proceed to brief their *in custodia legis* and other arguments, so that this  
 11 Court can rule on the merits. But it would be wasteful for the Rubins to brief and the Court to  
 12 consider those merits arguments if it emerges that the Government will make good on its  
 13 distribution plan.

15 **WHEREFORE**, the Rubin Defendants respectfully request either that the Court deny the  
 16 Government's motion; or, in the alternative, that the Government's motion, and Defendants'  
 17 time to respond thereto, be adjourned until sometime after the scheduled December 10, 2013  
 18 conference before Judge Sweet, at which the Government's intentions regarding these funds will  
 19 be clarified.

20 //

21  
 22 <sup>3</sup> A transcript of the proceeding before Judge Sweet is not yet available; Defendants will supply it as soon as it  
 23 becomes available.

DATED at Seattle, Washington in the above District this 11<sup>th</sup> day of November 2013

Sternberg Thomson Okrent & Scher, PLLC

*/s/ Craig S. Sternberg*

By \_\_\_\_\_  
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CERTIFICATE OF SERVICE

The undersigned does hereby declare under penalty of perjury under the laws of the State of Washington that on November 11, 2013, I served the above joined Response and Motion for extension of time on the following parties in interest by using CM/ECF, which will send notification to the attorneys of record and by email, and first-class mail, postage prepaid as listed below:

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SIGNED at Seattle, Washington, this 11<sup>th</sup> day of November, 2013.

*/s/ Craig S. Sternberg*

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Craig S. Sternberg, WSBA No. 521

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TO EXTEND TIME

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